

Message

From: Keller, Kaitlin [keller.kaitlin@epa.gov]
Sent: 9/28/2018 1:11:18 PM
To: Beck, Nancy [Beck.Nancy@epa.gov]; Scott, Gregory [Scott.Gregory@epa.gov]; Hanley, Mary [Hanley.Mary@epa.gov]
CC: Bertrand, Charlotte [Bertrand.Charlotte@epa.gov]; Baptist, Erik [Baptist.Erik@epa.gov]
Subject: RE: Administrator Wheeler EPW Hearing QFRs OMB Passback
Attachments: Wheeler QFRs Passback OPP Edits 9.27.18.docx

Flag: Flag for follow up

Proposed edits to #46 c/d attached. I think for c the language was just a little awkward, tried to simplify it a bit.

Kaitlin Keller, Special Assistant
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Personal Phone / Ex. 6

From: Beck, Nancy
Sent: Thursday, September 27, 2018 1:27 PM
To: Scott, Gregory <Scott.Gregory@epa.gov>; Hanley, Mary <Hanley.Mary@epa.gov>; Keller, Kaitlin <keller.kaitlin@epa.gov>
Cc: Bertrand, Charlotte <Bertrand.Charlotte@epa.gov>; Baptist, Erik <Baptist.Erik@epa.gov>
Subject: FW: Administrator Wheeler EPW Hearing QFRs OMB Passback

Greg-

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Thanks.

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From: Frye, Tony (Robert)
Sent: Thursday, September 27, 2018 12:34 PM
To: Beck, Nancy <Beck.Nancy@epa.gov>; Baptist, Erik <Baptist.Erik@epa.gov>
Cc: Palich, Christian <palich.christian@epa.gov>; Kaiser, Sven-Erik <Kaiser.Sven-Erik@epa.gov>; Bolen, Derrick <bolen.derrick@epa.gov>
Subject: Administrator Wheeler EPW Hearing QFRs OMB Passback

Hello Team OCSPP – OMB reviewed Administrator Wheeler’s QFR responses from his EPW hearing on 8.1.2018 and had the following questions and feedback. Let us know if you have any responses or updates by noon tomorrow, 9.28.2018, so we can get them back for review by Administrator Wheeler this weekend. Thank you in advance!

11. Section 26 of TSCA states that:

“(4) CHEMICAL SUBSTANCES WITH COMPLETED RISK ASSESSMENTS.—With respect to a chemical substance listed in the 2014 update to the TSCA Work Plan for Chemical Assessments for which the Administrator has published a completed risk assessment prior to the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator may publish proposed and final rules under section 6(a) that are consistent with the scope of the completed risk assessment for the chemical substance and consistent with other applicable requirements of section 6.”

Page 1 of Attachment 1 is an email sent by EPA on March 17, 2016, the substance of which was shared with the bipartisan and bicameral negotiators of the Toxic Substances Control Act. It states that EPA “just discovered a technical issue that will have significant policy implications for EPA’s ongoing work under Section 6. As currently drafted, both Senate and House bills could frustrate EPA’s ability to timely manage risks that have been (or may be) identified in our current Work Plan risk assessments.” The email goes on to describe several risk assessments on chemical substances (TCE, NMP, MC and 1-BP) that had been completed or were near completion by EPA, and stated that “EPA is *not* looking at all the conditions of use for these chemicals. This approach, which might be characterized as a *partial* risk evaluation or *partial* safety determination, we see as simply not contemplated under the Senate and House bills. The section 6 structure in both bills would require EPA to assess a chemical in its entirety, based on all conditions of use – not just a subset of those uses.” EPA then went on to state that if it were to move forward with rulemakings to restrict or ban some or all of these substances (which it has subsequently proposed to do), there would be some risk that the rules would be found to be inconsistent with the new statutory requirement to assess all conditions of use. EPA said that it would “welcome an opportunity to work with you on a drafting solution to this issue.”

- a. Do you agree with EPA’s March 17, 2016 view that if it had moved forward with these partial risk evaluations and rulemakings absent explicit statutory authority to do so even though the risk evaluations had not considered all conditions of use, that EPA could have been sued for not complying with the law’s requirements? If not, please provide specific reasons why not.

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- b. Pages 2 and 3 of Attachment 1 consist of April 2, 2016 Technical Assistance from EPA that was provided to the Senate on a drafting solution to address the problem identified by EPA on March 17, 2016. Do you agree that this language, which is also drafted as an amendment to Section 26, bears a close resemblance to the language that was enacted into law, and, like the enacted text, provides EPA with statutory authority to complete rulemakings on the chemical substances on which it completed risk assessments prior to the enactment of the new law even though the risk assessments were not undertaken for all conditions of use? If not, please provide specific reasons why not.

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34. The EPA's regulations for implementing the recent TSCA reform bill passed by Congress limits the EPA from considering the "legacy uses" of a chemical when deciding whether to regulate it under the TSCA program. Drinking water contamination from a plant that is no longer manufacturing PFOA would be considered a legacy use. Despite Congress's very clear direction, those rules ignore the public's current exposure as a result of the past uses of chemicals. Legacy uses pose risks to public health because the past manufacturing and disposal of those chemicals can still contaminate groundwater, as is currently the case with PFOA in Hoosick Falls, NY. Will you review those implementation rules and direct your staff to revise them to ensure that EPA is considering all potential uses and potential pathways of exposure for these chemicals?

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46. Under your leadership, the EPA has indefinitely delayed finalizing its proposed bans on high-risk uses of methylene chloride, N-methylpyrrolidone, and trichloroethylene.^{[1],[2]} The 2016 Lautenberg Act specifically authorized the EPA to pursue needed restrictions on these chemicals. The law allowed for prioritized action on high-risk uses of these chemicals—which the EPA has declared to present unreasonable risk. Dozens of deaths have been linked to methylene chloride-based paint strippers, and agency experts have noted connections between trichloroethylene and developmental damage.

^[1] Kaplan, Sheila. "E.P.A. Delays Bans on Uses of Hazardous Chemicals." New York Times, December 19, 2017. <https://www.nytimes.com/2017/12/19/health/epa-toxic-chemicals.html>

^[2] Environmental Protection Agency, "New Chemicals Decision-Making Framework: Working Approach to Making Determinations under Section 5 of TSCA." November 2017. As found on January 17, 2018 at https://www.epa.gov/sites/production/files/2017-11/documents/new_chemicals_decision_framework_7_november_2017.pdf

Trichloroethylene was one of the chemicals found in the water around Camp Lejeune, a Marine base in North Carolina. Potentially 900,000 service members were exposed to this dangerous chemical, which causes cancer and is linked to fetal cardiac defects.^[3]

- a. Can you provide a detailed justification for the indefinite delay of the proposed bans for high-risk uses of methylene chloride, N-methylpyrrolidone, and trichloroethylene?

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- b. Was Michael Dourson involved in any capacity on the evaluation of trichloroethylene while he was working as an EPA advisor? If so, please detail and provide any written documents of his work, including any memos, meeting notes, or other correspondence.

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Also, under the previous administration, the EPA had proposed to ban the use of the chlorpyrifos, a neurotoxic pesticide used on a variety of fruits and vegetables.^[4] Residential and indoor use of chlorpyrifos was banned in 2000.^[5] However, you opted to reject the EPA's earlier findings and deny the petition to ban the use of chlorpyrifos,^[6] despite the EPA analyses that found widespread risk from pesticide residues, drinking water contamination, and drift. Chlorpyrifos has been linked to neurological damage, with children particularly at risk for learning disabilities.

^[3] Agency for Toxic Substances and Disease Registry. "Camp Lejeune, North Carolina: Health effects linked with trichloroethylene ((TCE), tetrachloroethylene (PCE), benzene, and vinyl chloride exposure." April 11, 2017. As found on January 17, 2018 at https://www.atsdr.cdc.gov/sites/lejeune/tce_pce.html

^[4] New York Times, "EPA's Decision Not to Ban Chlorpyrifos." October 21, 2017. <https://www.nytimes.com/interactive/2017/10/21/us/document-EPA-Chlorpyrifos-FOIA-E-mails-to-NYT.html>

^[5] Environmental Protection Agency, "Dursban Announcement" Archived Speech by Carol M. Browner, June 8, 2000. As found on January 17, 2018 at <http://archive.is/ANPup#selection-803.0-819.477>

^[6] Environmental Protection Agency, "News Release: EPA Administrator Pruitt Denies Petition to Ban Widely Used Pesticide." March 29, 2017. As found on January 17, 2018 at <http://archive.is/XAUYw>

- c. Can you provide a detailed explanation of why the EPA chose to refute earlier analyses performed by Science Advisory Panels, including those done in 2016,^[7] 2012,^[8] and 2008^[9], which provided independent scientific review and reaffirmed the health risks connected with chlorpyrifos exposure? Please include any and all new studies, or analyses, performed since the November 2016 Human Health Risk Assessment that provide the basis for this decision.

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- d. Can you provide a detailed timeline for the “ongoing registration review”^[10] that the agency is performing to continue its evaluation of the risks of chlorpyrifos, despite the body of evidence previously collected by EPA researchers?

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- e. Can you provide the times and dates of every meeting and any relevant communication that you or your senior administration officials had regarding chlorpyrifos or toxic chemical

^[7] Environmental Protection Agency, “Memorandum on Meeting Minutes of the April 19-21 2016 FIFRA SAP Meeting Held to Consider and Review Scientific Issues Associated with “Chlorpyrifos: Analysis of Biomonitoring Data.” July 20, 2016. As found at https://www.epa.gov/sites/production/files/2016-07/documents/chlorpyrifos_sap_april_2016_final_minutes.pdf

^[8] Environmental Protection Agency, “Memorandum on Meeting Minutes of the FIFRA Scientific Advisory Panel Meeting held April 10-12, 2012 on “Chlorpyrifos Health Effects.” As found on January 17, 2018 at <https://www.epa.gov/sites/production/files/2015-06/documents/041012minutes.pdf>

^[9] Environmental Protection Agency, “Memorandum: Transmittal of Meeting Minutes of the FIFRA Scientific Advisory Panel Meeting held September 16-18, 2008 on the Agency’s Evaluation of the Toxicity Profile of Chlorpyrifos.” December 17, 2008. As found on Regulations.gov on January 17, 2018 at <https://www.regulations.gov/document?D=EPA-HQ-OPP-2008-0274-0064>

^[10] Environmental Protection Agency, “Revised Human Health Risks Assessment on Chlorpyrifos.” As found on January 17, 2018 at <https://www.epa.gov/ingredients-used-pesticide-products/revised-human-health-risk-assessment-chlorpyrifos>

standards, including with employees of or lobbyists working on behalf of Dow Chemical, the American Chemistry Council, the American Farm Bureau, or CropLife America?

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